

DATE: Sept 15, 2011
TO: Chief Jim Maher
FROM: Captain Robert Benton – Chairperson
C.C: Deputy City Attorney Michael McGuinness
SUBJECT: Review of Officer Involved Shooting Incident #09-15148

The Shooting Review Board has reviewed the Officer Involved Shooting incident relative to Escondido Police Department Case #09-15148.

Board of Review:

Captain Robert Benton Uniform Bureau Commander - Chairperson
Lieutenant Craig Carter - Investigations Commander
Lieutenant Christopher Wynn - Investigations Commander
Lieutenant Mark Wrisley - Training Manager

Involved Officer: Detective Timothy Reiley #335

Date & Time: October 15, 2009, at approximately 1130 hours.

Location: The Western parking lot/driveway of 1811 E. Grand Ave.

Finding: Within Policy

Involved Party:

Deceased: Jennifer Lynn Favreau
Suspect: Christopher Ramirez

Synopsis:

On 10-15-09 at about 1130 hours, Christopher Ramirez drove a stolen 2005 Ford Focus through the parking lot of 1811 E. Grand Ave in Escondido. The car was reported stolen on 10-06-09. Jennifer Favreau, his girlfriend, was his passenger and assisting Escondido Police Investigators in the apprehension of Ramirez. Escondido Police Department Special Investigations Unit (SIU) detectives were on scene and attempted to stop Ramirez as he drove out of the parking lot.

Officer Dixon, who was assigned to SIU, was wearing a load bearing raid vest with a sewn on cloth police badge and a patch on the front and back that reads "POLICE."
Officer Dixon exited an unmarked police car and from about eight feet away, pointed his

pistol at the driver identified as Christopher Ramirez. Officer Dixon yelled "Police" at Ramirez, noticing that the car windows were down. Ramirez stopped suddenly and put the car in reverse, quickly backing up and colliding with a stopped undercover vehicle driven by Detective Naranjo pushing the vehicle laterally.

Following the collision with Naranjo, Ramirez quickly drove forward and swerved to the left directly toward where Detective Reiley (on foot) was standing. Detective Reiley was also wearing a police raid vest marked similar to Officer Dixon's vest. Detective Reiley said he pointed his pistol at Ramirez and fired his service weapon at Ramirez about four times. Detective Reiley said Ramirez's vehicle passed within one to two feet of him. Officer Reiley said he was afraid for his life and thought Ramirez was trying to run him over. Officer Umstot and Detective Berreth (both on foot) were also within feet of the moving car. Officer Umstot and Detective Berreth had to jump and run out of the way to avoid being struck by the vehicle.

Ramirez continued driving forward and rammed into the front end of a stopped black and white police car, which was blocking the exit to the complex. Officer Stephens was in the driver's seat of the police unit and braced himself as he knew he was going to be hit by the oncoming vehicle being driven by Ramirez. The force of the collision pushed Stephen's stopped police car back approximately five feet. The Ford Focus was disabled as a result of the collision and Ramirez, who was uninjured, was taken into custody. Jennifer Favreau, who was the front seat passenger, had been unintentionally shot by Detective Reiley and was transported to Palomar Hospital where she later died as a result of her injuries.

Ramirez was arrested at the scene and waived Miranda. Ramirez admitted that he took the Ford Focus on 10-14-09 and claimed the keys were in the ignition when he acquired the vehicle. Ramirez said he saw the officer point a gun at him. Ramirez denied seeing the officers in their raid vests and claimed he thought the officer was a "Homie." Ramirez is on active parole for auto theft. A parole agent placed a parole hold on Ramirez, per PC 3056. Ramirez was charged with three counts of P.C. 245(c) assault on a peace officer. Ramirez also had a small quantity of methamphetamine in his possession, a violation of H&S 11377(a).

On February 4, 2011, the San Diego County District Attorney's Office, Special Operations Unit, completed their review of this incident and found that Detective Reiley did not violate any criminal laws during the incident.

On November 17, 2010, Christopher Ramirez plead guilty to four counts of assault with a deadly weapon, possession of a controlled substance and driving a stolen vehicle and received a sentence of 10 years in state prison.

Shooting Review Board Investigation:

While the Shooting Review Board was convened, the following actions were taken by members during the investigation:

- Received an overview of the incident by Sgt. Diana Provost, and Detective John O'Donnell the case agent both of the Crime of Violence (COV) Unit.
- Read and reviewed the investigation completed by the Escondido Police Department Crimes of Violence Unit.
- Read all transcripts of the involved officer interviews, Ramirez interview and written reports submitted by officers.
- Reviewed the photographs of the scene. These photos included overall and detail photos of how the scene looked immediately following the incident. Overhead photographs of the incident scene were also taken by helicopter within hours of the incident.
- Reviewed video footage taken from Officer Walters' motorcycle immediately following the shooting incident.
- A physical inspection of the scene was conducted.
- Review of all radio transmissions leading up to the incident, during the incident and immediately following the incident.
- Inspected the vehicles driven by Christopher Ramirez, Detective Naranjo and Officer Stephens.
- Reviewed the scene diagram created by the Traffic Division, which depicted where the officers and detectives were standing during the incident relative to the vehicle being driven by Christopher Ramirez. The Traffic Division also created an animation that showed the incident from Detective Reiley's perspective.
- Interviews were conducted with Acting Sergeant Whitaker who was the scene supervisor and Sgt. Ellis who is the supervisor of the Special Investigations Unit.

Findings of the Board:

This Shooting Review Board looked primarily at issues of Policy, Tactics, Training, and Equipment. The following are the findings of the Board and are not in any specific order.

Policy:

- The Shooting Review Board has determined this shooting was within department policy. This finding is based on Detective Reiley's statement to the investigators that Ramirez drove at a high rate of speed directly at him and other officers. Additionally, Officer Umstot stated that he had to jump out of the way to avoid

being struck by Ramirez. Detective Reiley stated in his interview, "I remember I thought I was going to get hit. I was trying to get out of the way. And I remembered I fired towards the windshield, towards him. Then, I kept trying to get out of the way, moved to my right and he kept coming closer and I fired another, I think three times. I remember him coming within I think a foot or two of me." "I thought he was going to, uh, going to hit me or, or Bodie and I..." Detective Reiley stated he utilized deadly force to protect his life and the life of other officers. Department Instruction 1.5 states, "It is the policy of the Escondido Police Department that armed personnel shall use a firearm only as a last resort when it reasonably appears necessary, and according to law." It further states that officers may use deadly force "to protect themselves from death or other serious bodily injury; or to protect another officer or any person from death or serious bodily injury."

- Additionally, the department also has a policy regarding shooting at a moving vehicle. Department Instruction 1.5, V. D. 2. states; "Firing at or from moving vehicles is generally prohibited. Experience shows that such action is rarely effective and is extremely hazardous to innocent persons. Only in extremely rare and extraordinary situations is such action justified. Extremely rare and extraordinary situations are those that necessitate the use of a firearm as the ultimate measure of defense of self or another when the suspect is using deadly force." It is the findings of the Shooting Review Board that Officer Reiley fired in the ultimate measure of defense for himself and the other officers who were in front of Ramirez vehicle. The Board based their findings on Officer Reiley's statements, the witness officers and the physical evidence at the scene.

Tactics:

- The shooting review board reviewed the tactics used by investigators in this shooting incident. The board understands that each incident is unique and dynamic. The tactics used and the decisions made were based on training, experience and how this department has handled this type of incident in the past. According to the Detective Cirilo, who was the case agent, told investigators the decision to allow the car to begin driving was based on a multiple of factors. Primarily the greatest concern was an adjacent elementary school separated only by a low chain link fence which would easily be jumped if a foot pursuit ensued. The detectives on scene quickly realized that Oakhill Elementary School was adjacent to the area where the stolen vehicle was parked and that children playing in the yard could be in danger. The school was contacted and locked down prior to any actions being initiated. However, there was no way to clear all of the children from the yard or the parking area adjacent to where the car was parked. Any confrontation or foot pursuit with the suspect in that vicinity could have been extremely dangerous for the children present. Also discussed was not allowing the vehicle out of the parkinglot, which likely become a vehicle pursuit and put many other lives in jeopardy. It was decided to allow the vehicle to move to the west parkinglot area which was void of persons at the time. They planned to

block Ramirez in with two undercover vehicles and the vehicle with the use of both marked and unmarked police cars.

- According to Detective Cirillo's statement it was not his intention to allow Jennifer Favreau to be with Christopher Ramirez during the intervention and told her it was "a bad idea". However when he witnessed her getting into the vehicle he should have clearly communicated this information to the other units. It was not.

Training

- Communications regarding the suspect's actions need to be clearly transmitted. When Favreau and Ramirez approached the car, Detective Cirilo broadcast that the female was approaching the car. Some officers understood that Favreau was in the car, but Detective Reiley did not. After a review of the radio transmissions, it was realized the communication was not clear.
- It does not appear that ongoing and meaningful communications were present between the unit supervisor Sgt Ellis and patrol supervisor Acting Sgt Heath. Sgt. Ellis briefed the Watch Commander initially, but as the surveillance unfolded, there was little communication between investigations and the patrol supervision team.
- Although the scene was locked down quickly by on scene investigators and evidence was preserved, Detective Reiley's weapon was taken by a patrol supervisor and secured in a trunk of a police vehicle. This is not the best method of evidence collection.
- During the interviews of the involved officers, the case agent asked several leading questions, interrupted or spoke over the interviewee and at times did not allow the officers to answer questions for themselves.
- Although first aid was immediately provided to Favreau, officers need to ensure they are using the appropriate language and are following the most current training protocols when documenting their efforts.
- During the interview of the involved officers, the case agent asked many leading questions and interrupted the officers when they were attempting to provide their answers. Additionally, several officers were not asked some of the most basic questions such as, "did you fire your weapon?" and "why or why not?" Also the investigators often times talked over the person answering the question resulting in a number of unintelligible responses.

Equipment

- Although Officer Reiley and Dixon were clearly identifiable as police officers, not all of the plainclothes personnel were wearing the appropriate police designations at the time of the takedown. The board recognizes that the nature of undercover work may preclude officers from wearing police markings all the time, however when an arrest situation occurs, officers must take the time to don their police vests and department identification or utilize quickly removable cover-ups.

Recommendations:

Based on the investigation, the Shooting Review Board recommends the following:

- The board believes in future situations where the use of undercover or marked vehicles to block a suspect's means of egress, a direct supervisor of the personnel involved should be present or another supervisor who has been designated as the on-scene supervisor. In this case, an acting patrol supervisor was present, but was not aware of all the facts of the case and could not approach the location being in uniform and in a marked vehicle not allowing him to fully supervise the incident. In the event that a supervisor is unable to be present on scene, an acting supervisor should be designated and that authority should be communicated to all involved. Additionally, the supervisor of the investigations unit should keep the patrol supervision team informed of plans and developments, particularly if patrol assets are to be used.
- Additional training in officer involved shootings should be provided to detectives especially in regards to interviewing techniques and questions to ask. In addition investigators should provide a summary of each interview rather than relying on transcripts of interviews.
- A standard checklist of questions should be developed for detectives to use to make sure that all pertinent questions are asked of the involved officers.
- A checklist of who should be submitting reports should be created at the earliest convenience. All officers and supervisors should submit reports within department guidelines.
- Department Range training should be conducted regarding the dynamics of shooting at moving threats.
- Discussions at the command/management level should occur to determine how the department will handle stolen vehicles that are located unoccupied. A policy may need to be implemented regarding if the vehicle will ever be allowed to move with a suspect driving and what level of force will be acceptable to stop a stolen

vehicle from moving. The weight of a property crime versus the potential outcome should be discussed.

- Discussions at the command/management level should occur to review the department's current policy regarding shooting at moving vehicles. The Department's current policy states that shooting at moving vehicles is generally prohibited.
- As stated above not all plainclothes detectives on scene wore clothing clearly identifying them as police. It is recommended that the department research and purchase items allowing investigators to quickly don gear that would clearly identify them as law enforcement both from the front and rear.